

NTSB Order No. EA-4237

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17th day of August, 1994

Respondent .

Docket SE-12154

Respondent's appeal from the law judge's initial decision raised only two issues: 1) "whether the [law judge] erred in refusing to permit discovery of information and introduction of evidence relating to defense of selective prosecution," and 2) "whether the [law judge] denied [respondent] his due process right to a fair and impartial hearing by examining witnesses with such extrajudicial, personal bias that he became an advocate for the FAA." (Respondent's Appeal Brief at 6.) We rejected both

6267A

arguments, and affirmed the initial decision. Although we did not view respondent's appeal brief as directly contesting the law judge's finding that he was careless, we nonetheless noted our complete agreement with the law judge's rejection of respondent's defenses as meritless, and with his conclusion that respondent's operation was careless and in violation of section 91.9. Order No. EA-4090 at 2, n.4, and at 3, n.5.

In his petition for reconsideration, respondent contends that we misapprehended his arguments on appeal. Specifically, he asserts that "[t]o the extent that the law judge's finding of 'carelessness' was based on the clear legal error committed by the law judge in denying the respondent expanded discovery rights that would have enabled him to show selective prosecution, the respondent did, indeed, challenge on appeal this finding. . . . . In other words, if the respondent would have been allowed to develop this defense, the law judge would have been precluded from finding him guilty of violating 14 C.F.R. 91.9." (Respondent's Petition at 2-3, emphasis in original.)

Although we still do not perceive in respondent's appeal brief any *direct* challenge to the law judge's finding that respondent was careless in allowing his aircraft wing to strike the nose cone of the parked aircraft, we will reiterate our total agreement with that finding. We also reaffirm our long-held belief that claims of selective prosecution are inappropriate for our consideration. See our extended discussion in Order No. EA-4090 at 3-4. Respondent now suggests that his claim of selective prosecution encompassed an assertion that "the FAA's witnesses did not offer competent testimony or evidence." However, the essential facts in this case are undisputed. Thus, respondent's attack on the accuracy of the Administrator's witnesses' testimony does not affect our legal conclusion that respondent's conduct was careless and in violation of section 91.9.

In sum, we hold that respondent has demonstrated no error in our earlier decision. His request for a new hearing or, in the alternative, for "permission to file a supplemental brief in support of his contention that the record contains no credible evidence to support the law judge's finding of 'carelessness'" is denied. Respondent has already had ample opportunity to challenge the law judge's finding.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's petition for reconsideration is denied.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above order.